

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

| | | |
|-----------------------|---|---------------------------|
| Xavier L. McCoy, |) | C/A No.: 4:11-773-JFA-TER |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| Mr. Officer Anderson, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

The *pro se* plaintiff, Xavier L. McCoy, brings this action pursuant to 42 U.S.C. § 1983 contending that the defendant violated his constitutional rights by subjecting him to excessive force. The plaintiff is an inmate of the South Carolina Department of Corrections (SCDC).

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he suggests that this court should grant the defendant's motion for summary judgment.² The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation and without a hearing.

The parties were advised of their right to file objections to the Report and Recommendation which was filed on June 2, 2012. The plaintiff filed objections to the

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying plaintiff of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Plaintiff responded to the motion.

Report after being granted an extension of time within which to do so. Thus, it appears this matter is ripe for review.

The Magistrate Judge finds that the plaintiff has failed to show that defendant's alleged use of force was malicious and sadistic rather than a good-faith effort to maintain or restore discipline. The Magistrate Judge also opines that the defendant performed the discretionary functions of his official duties in an objectively reasonable fashion such that he is entitled to qualified immunity. This court agrees and grants summary judgment in favor of the defendant.

The plaintiff objects to the Report first addressing his motion for preliminary injunction to allow plaintiff access to the law library. As the Magistrate Judge notes, the relief sought by the plaintiff in this motion is unrelated to the relief he seeks in his complaint, which arises out of the alleged use of excessive force by the defendant. The plaintiff reiterates these claims of denial of access to the law library in another case pending before this court, *McCoy v. Glidewell*, C/A No. 4:11-1683-JFA-TER. Here, the Magistrate Judge finds that the plaintiff has failed to make the requisite showing under *Winter v. Natural Resources Defense Council, Inc.*, 55 U.S. 7, 129 S.Ct. 365, 374 (2008). This court agrees and denies plaintiff's motions for preliminary injunctions (ECF Nos 158, 175, 182).

After a careful review of the record, the applicable law, the Report and Recommendation, and the objections thereto, the court finds that the Magistrate Judge has accurately summarized the facts and applied the correct principles of law. Therefore, the Report and Recommendation is adopted in full and incorporated into this order. The court

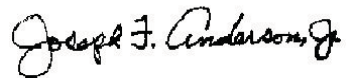
has conducted the required *de novo* review and finds the plaintiff's objections are duplicative of the original complaint and without merit, and they are thus overruled.

Accordingly, the defendant's motion for summary judgment (ECF No. 189) is hereby granted and this action is dismissed with prejudice.

All other pending motions³ in this action are denied.

IT IS SO ORDERED.

August 28, 2012
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

³ The court notes that the plaintiff has filed 51 motions to appoint counsel during the pendency of this litigation and numerous motions to compel and for extensions of time.